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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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INDEXED  DRAWN   
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APR 16 2001

EXAMINER

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: APR 16 2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/492,137	WATANABE ET AL.
Examiner	Art Unit	
Hao T Mai	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 May 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-10 and 12 in Paper No. 5 is acknowledged. However, since applicants have not indicated what's wrong with the restriction, therefore, the election is considered to be without traverse.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what applicants are trying to claim by the term "functional substance".

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by notoriously well known food powders such as Tang, Cool-aid, Hershey' s cake powder.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Vermeer(5,880,076). Vermeer teaches a powder consisting of perfumes , coloring agents, functional substances, trehalose and water-soluble hemicellulose(col. 14, lines 15+, col. 21, lines 25+).

7. Claims 2-4 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura et al(6,045,847). Nakamura teaches a powder water-soluble hemicellulose derived from a soybean(col.1, line 9, col. 3, lines 48+).

Regarding claim 3, the recitations the claim is considered as merely reciting the intended use of the claimed composition. Therefore, no patentable weight is given to this recitation in the product claim.

Regarding claim 4, Nakamura teaches a hemicellulose has an average of 500,00 to 1,000,000 molecular weigh(col. 3, lines 25+).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 5- 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al(6,045,847). Nakamura teach everything except for the specifically claimed percentage and ratio for the composition. However, the specifically claimed percentage and ratio are not seen to be a patentable distinction, and it would have been

obvious to one of ordinary skill in the art to modify the method of Nakamura by routine experimentation in order to arrive at applicant's claimed percentage and ratio.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao T Mai whose telephone number is (703)306-9171. The examiner can normally be reached on 8AM-7PM; MON-THU.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Miton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

hm  
May 31, 2001



CURTIS SHERRER  
PATENT EXAMINER